

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2011-304-C

IN RE:	§
	§
BELLSOUTH	§
TELECOMMUNICATIONS, LLC d/b/a	§
AT&T SOUTHEAST d/b/a AT&T	§
SOUTH CAROLINA,	§
	§
Complainant,	§
	§
v.	§
	§
HALO WIRELESS, INC.,	§
	§
Defendant	

**NOTICE OF REMOVAL TO BANKRUPTCY COURT**

PLEASE TAKE NOTICE that a **Notice of Removal** of the above entitled proceeding from the Public Service Commission of South Carolina to the United States Bankruptcy Court for the District of South Carolina was duly filed on the 11<sup>th</sup> day of October, 2011 by Halo Wireless, Inc. pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure in the United States Bankruptcy Court for the District of South Carolina. A true and correct copy of such Notice of Removal (without exhibits) is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. §1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure, jurisdiction now lies

exclusively with the bankruptcy court and has been divested from this Honorable tribunal.

Respectfully submitted this 11<sup>th</sup> day of October, 2011.

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**BANKRUPTCY COUNSEL FOR HALO  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Notice of Removal to Bankruptcy Court* was served via regular mail on the following counsel of record on this the 11<sup>th</sup> day of October, 2011:

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

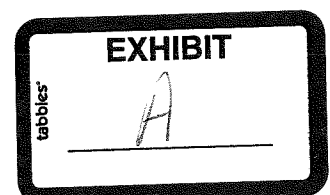
IN RE: )  
 ) Case No. 11-42464-btr-11  
HALO WIRELESS, INC., )  
 ) (Pending in the United States  
DEBTOR. ) Bankruptcy Court for the Eastern  
 ) District of Texas, Sherman Division)  
 )  
 )  
 )  
Bellsouth ) Adv. Pro. No. \_\_\_\_\_  
TELECOMMUNICATIONS, LLC d/b/a )  
AT&T Southeast d/b/a AT&T )  
SOUTH CAROLINA, )  
 )  
V. )  
 )  
HALO WIRELESS, INC. )  
 )  
 )  
 )

**NOTICE OF REMOVAL**

COMES NOW, Halo Wireless, Inc. (the "Debtor"), the debtor and debtor-in-possession in In re Halo Wireless, Inc., Bankruptcy Case No. 11-42464-btr-11 pending in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, and files this Notice of Removal as follows:

**I. Background**

1. On July 29, 2011 Plaintiff BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina ("Plaintiff" or "Complainant") filed a "Complaint and Petition for Relief" (the "Complaint") against the Debtor in an action styled BellSouth Telecommunications, LLC d/b/a AT&T South Carolina v. Halo



Wireless, Inc. pending before the Public Service Commission of South Carolina (the “South Carolina PSC”) under Docket No. 2011-304-C (the “PSC Proceeding”).

2. In the PSC Proceeding, the Complainant seeks declaratory rulings reclassifying the nature of the wireless telecommunication traffic Debtor has transmitted, declaring that Debtor’s business is illegal, awarding Complainant amounts it claims Debtor owes for its transmission of traffic, and authorizing Complainant to terminate the transmission of Debtor’s traffic.

3. On August 8, 2011 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, commencing the above referenced bankruptcy case which bears Case No. 11-42464 (the “Texas Bankruptcy Case”). Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its property as a debtor in possession.

4. No trustee or examiner has been appointed in the Debtor’s Chapter 11 bankruptcy proceeding, nor has a creditors’ committee or other official committee been appointed pursuant to 11 U.S.C. § 1102.

5. On August 22, 2011, the Debtor filed a Suggestion of Bankruptcy with the South Carolina PSC notifying the South Carolina PSC and all parties to the PSC Proceeding that the Debtor had filed for bankruptcy and that the provisions of § 362 of the Bankruptcy Code stayed any further action in the PSC Proceeding.

6. On or about September 1, 2011, Debtor filed an adversary proceeding in the Texas Bankruptcy Case styled Halo Wireless, Inc. and Transcom Enhanced Services,

Inc. v. The Livingston Telephone Company, et al., being Adversary Proc. No. 11-04160 (the “Adversary Proceeding”) in the Texas Bankruptcy Case. Among the defendants sued by the Debtor in the Adversary Proceeding is Complainant BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina. Attached hereto as Attachment A is a true and correct copy of the Original Complaint filed in the Adversary Proceeding. The Original Complaint in the Adversary Proceeding puts at issue all allegations contained in the PSC Proceeding initiated by Plaintiff Bellsouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina.

## **II. Removal under 28 U.S.C. § 1452**

7. The PSC proceeding may be removed to this Court pursuant to 28 U.S.C. § 1452, which provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title. 28 U.S.C.A. § 1452(a).

Based on the language of § 1452, a party may remove any civil action over which a bankruptcy court has jurisdiction under 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 1334, this Court has original jurisdiction over all civil proceedings “arising under title 11, or arising in or related to cases under Title 11.” 28 U.S.C. § 1334(b).

8. The PSC Proceeding is related to the Debtor’s Texas Bankruptcy Case within the meaning of 28 U.S.C. § 1334 because the claims for relief asserted by the Plaintiff therein seek to determine amounts the Debtor allegedly owes the Plaintiff and, more importantly, challenges the Debtor’s right to operate its business, including as a debtor-in-possession under the Bankruptcy Code.

9. The PSC Proceeding is a civil action within the meaning of 28 U.S.C. § 1452 because: a) the PSC Proceeding is a private party dispute between the Plaintiff and the Debtor in which the Plaintiff seeks monetary damages and injunctive relief; and b) the PSC Proceeding is not an action before the Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power. Instead, the South Carolina PSC is functioning as a judicial tribunal over a private civil action between the Complainant and the Debtor.

10. Based on the foregoing, the PSC Proceeding may be removed to this Court pursuant to 28 U.S.C. § 1452.

**III. All Requirements for Removal Have Been Met and Removal to this Court is Proper**

11. This Notice of Removal is timely pursuant to FRBP 9027 because the Debtor filed this Notice of Removal with this Court within ninety (90) days of entry of the order for relief under the Bankruptcy Code and within ninety (90) days of the Petition Date because the commencement of a voluntary Chapter 11 proceeding constitutes an order for relief. 11 U.S.C. § 301(b).

12. Upon removal, the PSC Proceeding is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O). Moreover, because the PSC Proceeding asserts a claim against the Debtor, it necessarily implicates the bankruptcy claims allowance process and is therefore constitutionally as well as statutorily “core” within the Supreme Court’s recent ruling in Stern v. Marshall, 131 S. Ct. 2594 (2011).

13. The United States Bankruptcy Court for the District of South Carolina, Columbia Division, is the proper court in which to remove this action pursuant to 28



U.S.C. § 1452 and FRBP 9027 because the PSC Proceeding is pending in this district and division.

14. Written notice of the filing of this Notice of Removal and a copy of this Notice of Removal are being served upon the Plaintiff through its counsel of record and will be filed with the Clerk of the South Carolina PSC.

15. True and correct copies of the pleadings and other documents on file in the PSC Proceeding are attached hereto as follows:

<u>Exhibit</u>	<u>Date</u>	<u>Filing</u>
1.	07/29/11	AT&T South Carolina's Complaint and Petition for Relief;
2.	08/01/11	Notice of Appearance of Counsel (Nanette S. Edwards and Shealy Boland Reibold) for the Office of Regulatory Staff;
3.	08/08/11	Notice of Hearing and Prefile Testimony Deadlines;
4.	08/08/11	Notice to Defendant of answer requirements;
5.	08/10/11	Directive of the PSC regarding appointment of David Butler as Hearing Officer;
6.	08/11/11	Letter to Chief Clerk of the South Carolina PSC regarding bankruptcy filing by Halo Wireless, Inc.;
7.	08/16/11	Order Appointing Hearing Officer; and
8.	08/22/11	Suggestion of Bankruptcy, Notice of Stay and Notice of Extensions Under 11 U.S.C. §108, and cover letter.

16. The Debtor has not heretofore sought similar relief regarding the removal of the PSC Proceeding.

#### **IV. ADOPTION AND RESERVATION OF DEFENSES**

17. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights to maintain and/or assert any affirmative defenses in this matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over

the person or subject matter; (2) arguments that venue is improper in the South Carolina PSC; (3) insufficiency of process; (4) failure to state a claim; (5) and any other pertinent defense available under applicable state or federal law, or otherwise, which rights are expressly reserved.

18. Further, nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of the Debtor's rights and protections under the automatic stay provided pursuant to § 362 of the Bankruptcy Code and any other provision of the Bankruptcy Code, which rights and protections are expressly reserved.

WHEREFORE the Debtor hereby removes the PSC Proceeding to the United States Bankruptcy Court for the District of South Carolina pursuant to 28 U.S.C. § 1452 and FRBP 9027.

Respectfully submitted this 11<sup>th</sup> day of October, 2011.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

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**ATTORNEYS FOR HALO WIRELESS, INC.**